

**WSOU INVESTMENTS, LLC d/b/a
BRAZOS LICENSING AND
DEVELOPMENT,**

V.

Defendant.

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CIVIL ACTION NO. 6:20-cv-1170

JURY TRIAL DEMANDED

Plaintiff WSOU Investments, LLC d/b/a Brazos Licensing and Development (“Brazos” or “Plaintiff”), by and through its attorneys, files this Complaint for Patent Infringement against Defendant Salesforce.com, Inc. (“Salesforce”) and alleges:

NATURE OF THE ACTION

1. This is a civil action for patent infringement arising under the Patent Laws of the United States, 35 U.S.C. §§ 1, et seq., including §§ 271, 281, 284, and 285.

THE PARTIES

1. Brazos is a limited liability corporation organized and existing under the laws of Delaware, with its principal place of business at 606 Austin Avenue, Suite 6, Waco, Texas 76701.

2. Defendant Salesforce is a corporation organized and existing under the laws of Delaware that maintains an established place of business at 415 Mission Street, 3rd Floor, San Francisco, California 94105.

JURISDICTION AND VENUE

3. This is an action for patent infringement which arises under the Patent Laws of the United States, in particular, 35 U.S.C. §§271, 281, 284, and 285.

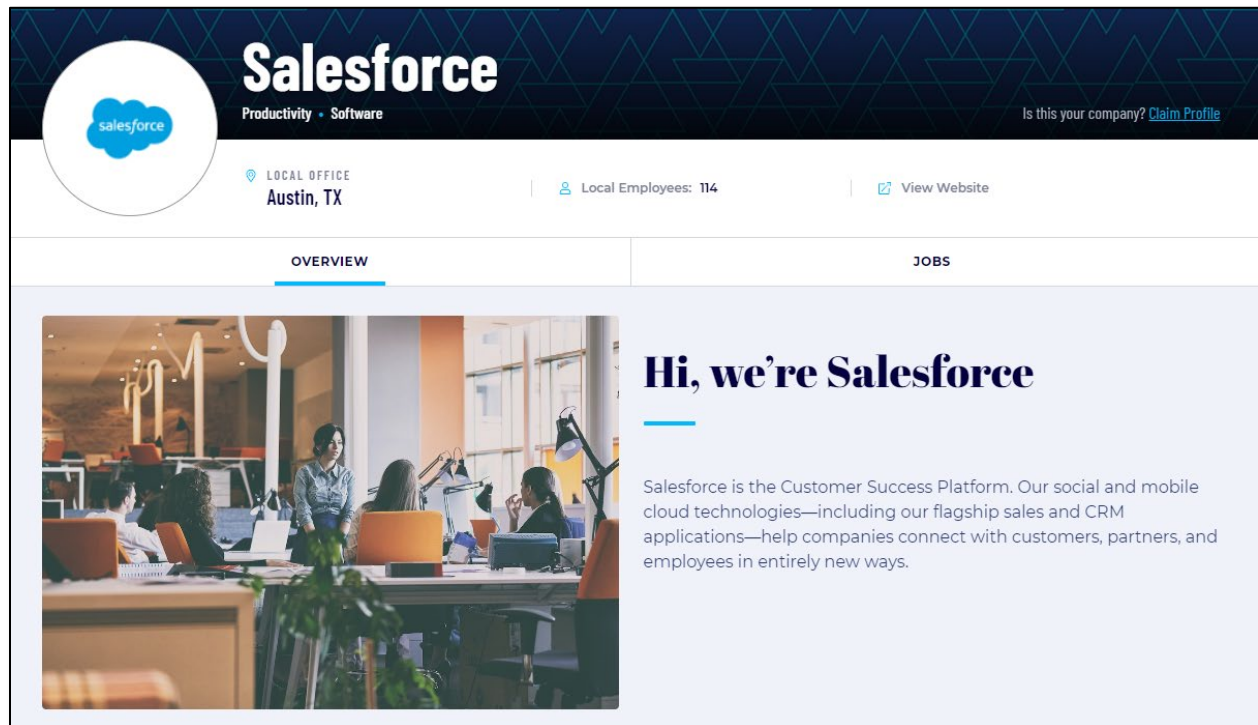
4. This Court has jurisdiction over the subject matter of this action under 28 U.S.C. §§ 1331 and 1338(a).

5. This Court has specific and general personal jurisdiction over Defendant pursuant to due process and/or the Texas Long Arm Statute because Defendant has committed acts giving rise to this action within Texas and within this judicial district. The Court's exercise of jurisdiction over Defendant would not offend traditional notions of fair play and substantial justice because Salesforce has established minimum contacts with the forum. For example, on information and belief, Defendant has committed acts of infringement in this judicial district, by among other things, selling and offering for sale products that infringe the asserted patent, directly or through intermediaries, as alleged herein.

6. Venue in the Western District of Texas is proper pursuant to 28 U.S.C. §§1391 and 1400(b) because Defendant has committed acts of infringement in this judicial district and has regular and established places of business in this judicial district and in Texas. As non-limiting examples, on information and belief, Defendant uses office space in Austin for client meetings. Salesforce has more than 300 employees that work in this judicial district, including employees working in the cities of Waco, Austin, and San Antonio. The titles of said employees include "Vice President," "Principal Architect," and "Senior Director."

7. Upon information and belief, the majority of Salesforce's nationwide workforce is working from home and will continue to be allowed to do so until at least August of 2021. Upon information and belief, some of the Salesforce employees working in the Western District utilize

their home as a principal place of business for Salesforce. Additionally, such employees are allowed to advertise that they are, for example, an Austin Salesforce employee. Because of such representations, local magazines advertise Salesforce as having a place of business in Austin.



Source: <https://www.builtinaustin.com/company/salesforce>

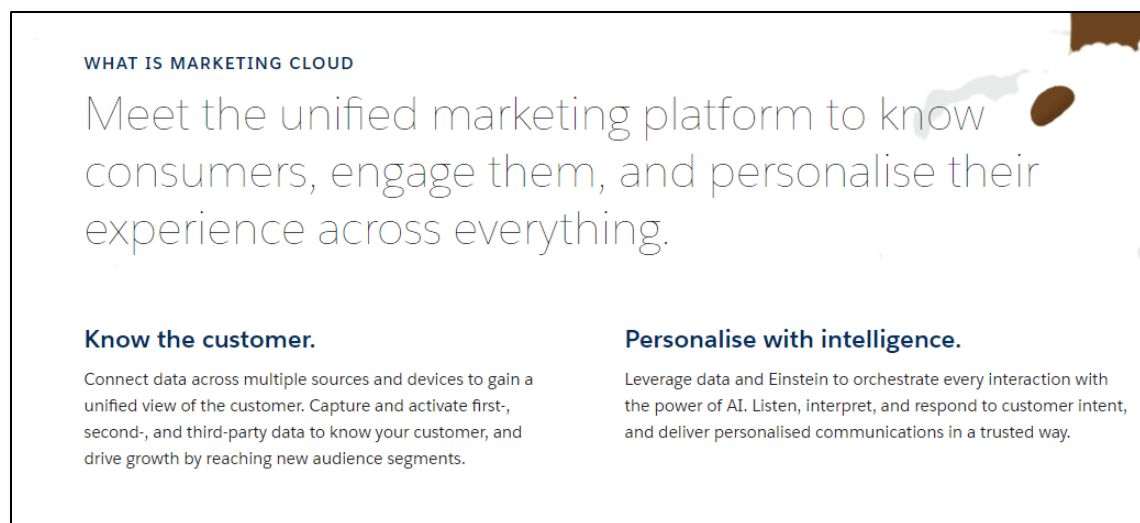
COUNT ONE - INFRINGEMENT OF U.S. PATENT NO. 9,088,493

1. Brazos re-alleges and incorporates by reference the preceding paragraphs of this Complaint.
2. On July 21, 2015, the United States Patent and Trademark Office duly and legally issued U.S. Patent No. 9,088,493 (“the ‘493 Patent”), entitled “Method and apparatus for time adaptation of online services to user behavior.” A true and correct copy of the ‘493 Patent is attached as Exhibit A to this Complaint.
3. Brazos is the owner of all rights, title, and interest in and to the ‘493 Patent,

including the right to assert all causes of action arising under the '493 Patent and the right to any remedies for the infringement of the '493 Patent.

4. Salesforce makes, uses, sells, offers for sale, imports, and/or distributes in the United States, including within this judicial district, products such as, but not limited to, Salesforce Marketing Cloud – Journey Builder (collectively, the “Accused Products”).

5. Salesforce Marketing Cloud is a unified marketing platform to know consumers of online service, engage them, and personalize their experience. With Salesforce Marketing Cloud's - Journey Builder, online service providers and marketers can create campaigning plans to deliver messages to users.

A presentation slide titled "WHAT IS MARKETING CLOUD" with a background image of a chocolate chip cookie. The slide describes the platform's capabilities in two columns.

WHAT IS MARKETING CLOUD


Meet the unified marketing platform to know consumers, engage them, and personalise their experience across everything.

<p>Know the customer.</p> <p>Connect data across multiple sources and devices to gain a unified view of the customer. Capture and activate first-, second-, and third-party data to know your customer, and drive growth by reaching new audience segments.</p>	<p>Personalise with intelligence.</p> <p>Leverage data and Einstein to orchestrate every interaction with the power of AI. Listen, interpret, and respond to customer intent, and deliver personalised communications in a trusted way.</p>
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Source: <https://www.salesforce.com/in/products/marketing-cloud/overview/>

MARKETING CLOUD PRODUCTS

Create a seamless experience across every customer touchpoint with integrated marketing tools.




Journey Builder

Build 1-to-1 customer Journeys across all channels and departments.

[WATCH DEMO](#)

[LEARN MORE >](#)




Email Studio

Build personalised email campaigns with the world's #1 email marketing platform.

[WATCH DEMO](#)

[LEARN MORE >](#)



Audience Studio

Capture and activate data from any source on a unified data management platform (DMP).

[WATCH DEMO](#)

[LEARN MORE >](#)

Source: <https://www.salesforce.com/in/products/marketing-cloud/overview/>

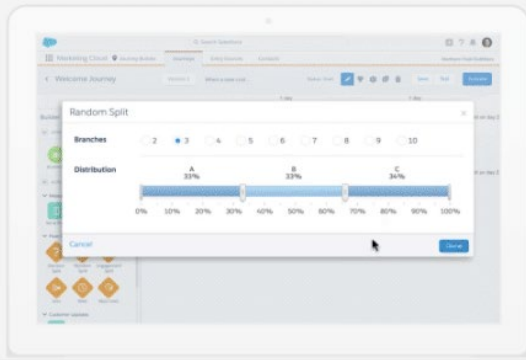
Meet Journey Builder.

Deliver cross-channel personalized experiences at every step of the customer lifecycle with campaign management.

See Journey Builder in action.

Learn how to create seamless customer experiences across every touchpoint including email, mobile, advertising, the web, direct mail, sales, commerce, and service.

[WATCH DEMO](#)



Source: <https://www.salesforce.com/products/marketing-cloud/journey-management/>

6. Journey Builder helps online platforms to build marketing campaigns that send messages to the customers (users) of the online services.

1. What Is Journey Builder?

Journey Builder is a campaign planning tool that empowers marketers to design and automate campaigns that guide customers through their journey with a brand. When configured, Journey Builder runs responsive campaigns automatically.

2. Journey Builder Prerequisites

Review these items before using Journey Builder in the Marketing Cloud whether you're a marketer or administrator.

3. Create a Journey

Navigate to Journey Builder. Click **Create New Journey**. Click **Create Journey from Scratch** or **Create Journey from Template**.

4. Journey Templates

Journey Templates are pre-defined journeys created by Salesforce or by other users. Salesforce templates provide in-context guidance based on common use cases and known marketing best practices. Shared templates are built by users in your business unit and shared with you. Create a shared template, use a template as-is, or modify a template for your use case.

Source:

https://help.salesforce.com/articleView?id=mc_jb_get_started_with_journey_builder.htm&type=5

7. Einstein Send Time Optimization allows marketers to use a Journey Builder activity to select the best send time for each individual email subscriber, based on engagement.

Einstein Send Time Optimization

Marketing Cloud's Einstein Send Time Optimization (STO) uses machine learning to determine the best time to send a message so that the message is likely to be opened.

Einstein Send Time Optimization helps marketers increase email engagement. Using automated analysis, Einstein determines the best time to send an email to each individual contact.

The Einstein STO Journey Builder activity can send email to each subscriber at the time when that subscriber is most likely to open the message Send Time Optimization. The Einstein Send Time Optimization application displays analytics that predict future message engagement.

This feature is available to customers with Marketing Cloud Einstein terms for Corporate, Enterprise, or Pro edition accounts with the Journey Builder add-on. To use this activity, activate Einstein Send Time Optimization for your business unit.

- **The Einstein Send Time Optimization Dashboard**

Visualize optimal predicted send times by the day or hour for all email addresses in a tenant or for all contacts in a business unit.

Source:

https://dreaevent.secure.force.com/articleView?id=mc_anb_einstein_sto_app.htm&type=0

8. Salesforce Marketing Cloud Data Management and Analytics collect data with the help of Collect Tracking Codes. Collect Tracking Codes is a Javascript snippet which collects data about the users of the online service.

Marketing Cloud Data Management and Analytics

Import and manage data from multiple sources to gain deep insights into the behaviors and interests of your contacts across channels. Use these insights to set marketing goals and refine customer journeys.

- **Analytics Builder**
Analytics Builder enables you to gain deep insights into the behaviors and interests of your contacts across channels. Use these insights to set marketing goals and refine customer journeys.
- **Collect Tracking Code**
Collect Tracking Code is a JavaScript snippet you can use to capture data about known contacts and unknown visitor behavior. You can use this data to enhance Contact profiles and optimize customer journeys across channels through predictive and personalized recommendations. You can also update product and content catalog details in real time or to track email-driven revenue.
- **Salesforce Audience Studio and Data Studio**
View Salesforce Audience Studio and Data Studio documentation.
- **Google Analytics 360 Integration for Marketing Cloud**
This integration enables you to track and analyze journey activity through your Google Analytics account without assistance from technical support or services. You determine the URL tags and how data is collected and presented in the customizable Google Analytics reporting dashboard. Use Google's native authentication to securely link your Marketing Cloud and Google Analytics 360 accounts.

Source:

https://dreamevent.secure.force.com/articleView?id=mc_data_management_and_analytics.htm&type=5

9. Collect Tracking Codes monitors the variables and events such as browser type, user location, session time, and length. These variable and events are related to user login and session information with online services.

Collect Tracking Code

Collect Tracking Code is a JavaScript snippet you can use to capture data about known contacts and unknown visitor behavior. You can use this data to enhance Contact profiles and optimize customer journeys across channels through predictive and personalized recommendations. You can also update product and content catalog details in real time or to track email-driven revenue.

When a visitor hits your website with the Collect code installed, a cookie is dropped with a unique ID and session ID. The cookie automatically adds an ID to all Collect Calls. The cookie and tracks the user until it is removed or cleared.

Collect Tracking Code monitors the variables and events you select at the contact level including:

- Browser type
- User location
- Session time and length
- Page URL
- Page title
- Referrer URL

Configurations vary by product and use case.



NOTE The Collect Tracking Code pixel identifies itself as an invisible image and does not affect the user experience of website visitors who use a screen reader.

Source: https://dreamevent.secure.force.com/articleView?id=mc_ctc_collect_code.htm&type=5,

10. As shown in the figure blow, Einstein Send Time Optimization predicts and displays the optimal send time (consistent usage) for the messages across the span of days and hours in a week with the help of a processor. The predicted data can be displayed with the help of Einstein Send Time Optimization Dashboard.

The Einstein Send Time Optimization Dashboard

Visualize optimal predicted send times by the day or hour for all email addresses in a tenant or for all contacts in a business unit.

To access the Einstein Send Time Optimization dashboard, go to Analytics Builder and click **Einstein Send Time Optimization**.

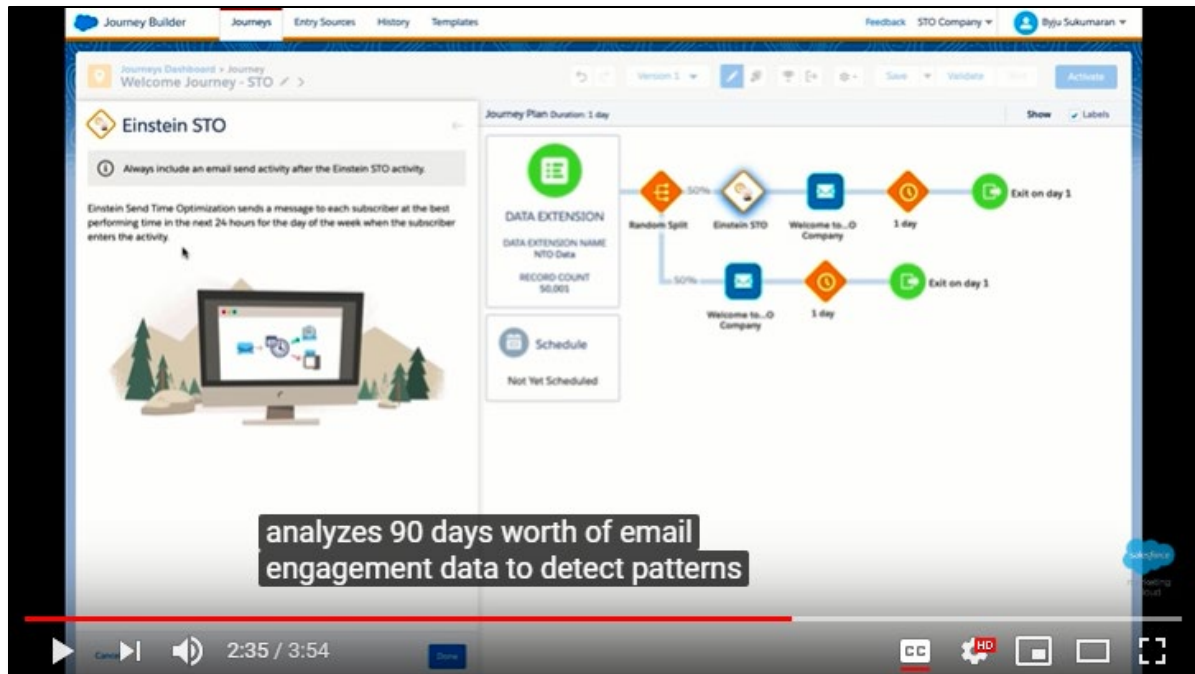
Use the Einstein Send Time Optimization dashboard to view optimal send times across the span of days and hours in a week. Or view optimal send times by day or by hour based on how many contacts or email recipients are predicted to open the message you send. Knowing the optimal send time by hour or day can help you choose the best time for batch sends.

- Total Email Addresses or Contacts shows the total quantity of contacts in the business unit or unique email addresses in the tenant.
- Assigned Personalized Send Time shows how many contacts or email addresses Einstein can make suggestions for.
- Pending Personalized Send Time shows how many contacts or email addresses Einstein needs more data to make suggestions for.
- Optimal Predicted Send Times shows the delivery times during the week when email recipients are most likely to open your messages. Einstein assigns a prediction score to each email address. Einstein gives a 0-100 probability score for all 168 hours in a week. The prediction score anticipates the best hour of the week to send to an email address so that a message is opened. This chart aggregates the prediction scores that Einstein gives each email address so it can show the single hour-day combination with the highest probability to promote opening a message. Einstein provides a list of optimal send times, too.
- Optimal Send Times by Day shows the total number of contacts or email addresses that are likely to open a message for each day.
- Optimal Send Times by Hour shows how many contacts or email addresses that are likely to open a message for each hour of the day.

Source:

https://dreaevent.secure.force.com/articleView?id=mc_anb_einstein_sto_dashboard.htm&type=0

11. To deliver the messages at the optimal time, Einstein analyses the 90 days' worth of email engagement data to detect the pattern of each subscriber (user) of the brand and the online service. Einstein sends time optimizations and transmits the message to the subscribers based on the pattern detection of the individual subscriber (user).



Source: <https://www.youtube.com/watch?v=v30wJVTqN8w>

Trailblazer COMMUNITY

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Review common use cases for including Einstein Send Time Optimization in a Marketing Cloud customer journey.

Optimize the Send Time of Each Message in a Journey

To increase overall engagement for a journey campaign, add the Einstein STO activity before each Email activity. Each message is sent to each contact in the journey when the contact is most likely to open it, within the next 24 hours.

Add a Split Activity to Measure Impact

To measure the impact of send time optimization, add the Einstein STO activity after a random split activity. Direct half the contacts in the journey to a branch where a wait activity precedes the email activity. Direct the other half to a branch where the Einstein STO activity precedes the email activity. Then check the open rate for each email activity and compare the difference. You can send more contacts down the Einstein optimized path in your next journey version.

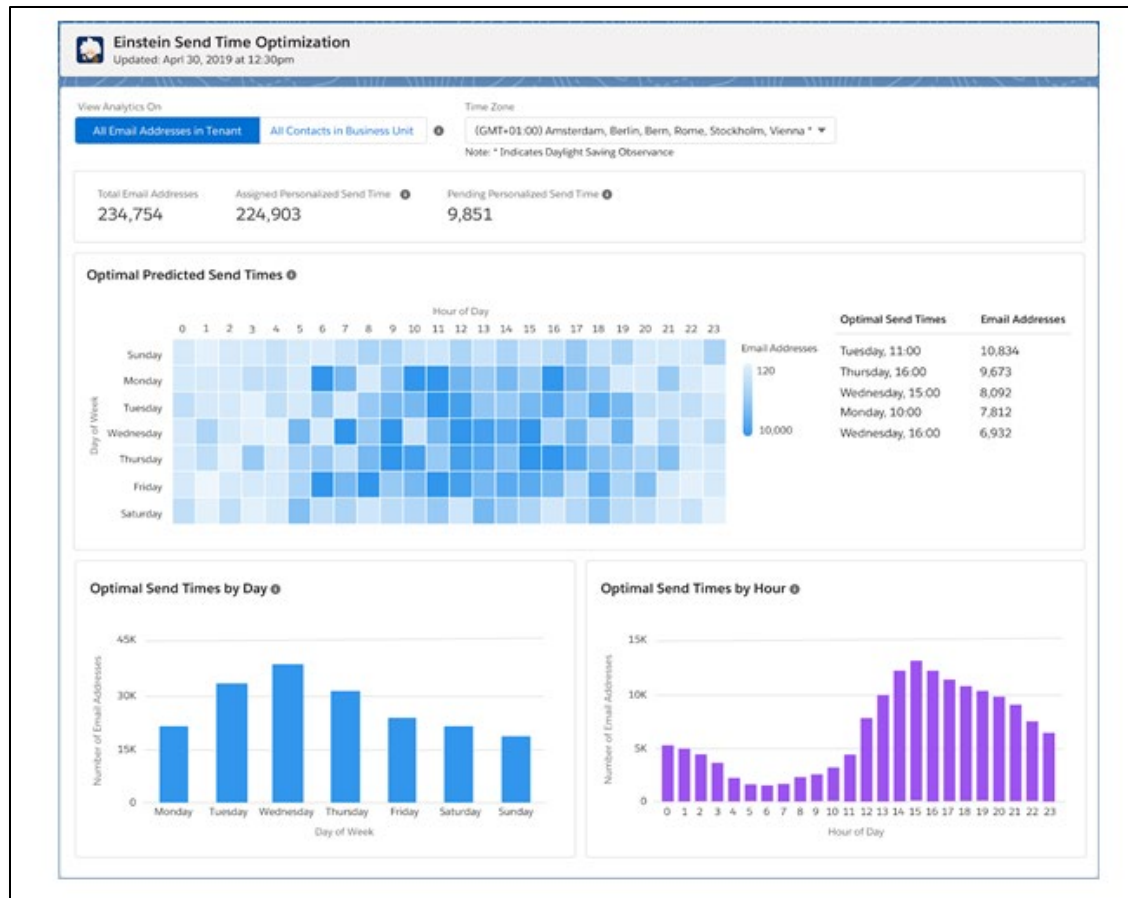
Combine with a Wait Activity

Combine a wait activity and Einstein STO activity to optimize send times when there is a minimum one-day wait between email messages in a customer journey.

NTO's marketing manager, Lisa, wants to optimize customer engagement for the welcome campaign. After customers subscribe to the NTO newsletter, they receive a series of three emails that set expectations and highlight the benefits of subscribing. Before the second and third messages, she's included a Wait activity that instructs the system to wait two days before sending the next message. To ensure that email are sent to each subscriber when that subscriber is most likely to open it, Lisa adds the Einstein STO activity between the Wait activity and Email activity for the second and third messages.

For example, Customer A and Customer B both subscribe to the newsletter on Tuesday, and they receive the initial welcome message within minutes. The second message is scheduled for Thursday. However, based on each subscriber's engagement behavior over the past 90 days, the second message is sent to Customer A at 11:30 AM and Customer B at 7 PM.

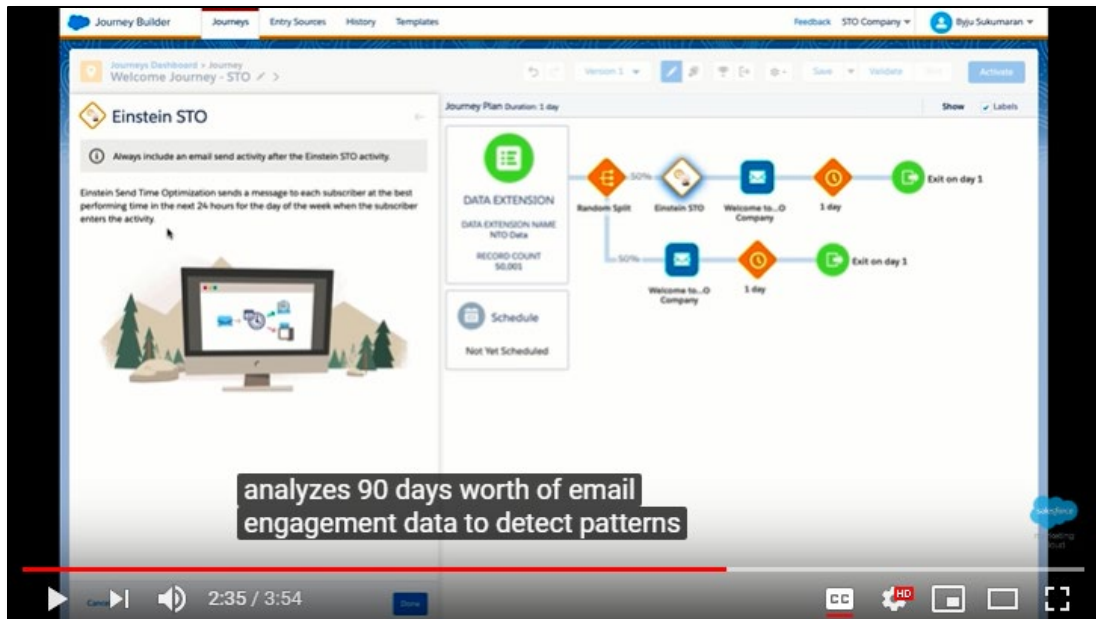
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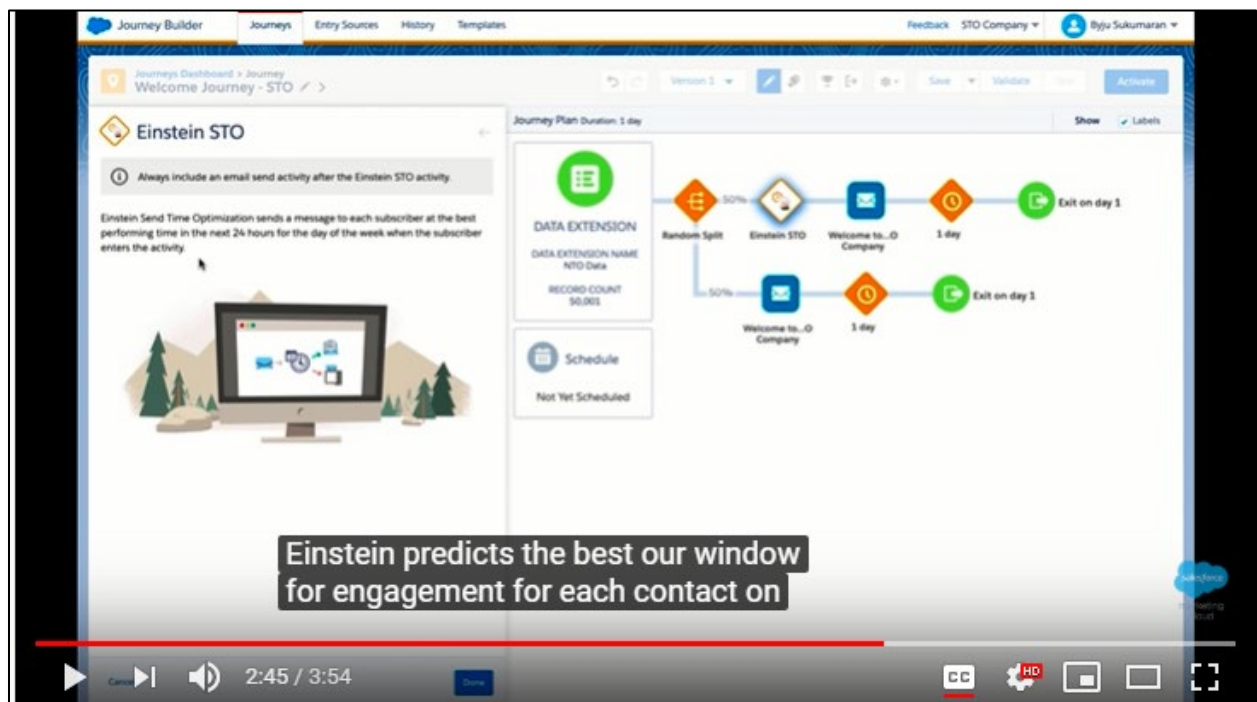
https://dramevent.secure.force.com/articleView?id=mc_anb_einstein_sto_dashboard.htm&type=0

12. Salesforce Marketing Cloud generates the scheduling information to deliver the messages at the optimal time with the help of Einstein Send Time Optimization. Einstein analyses the 90 days' worth of email engagement data to detect the pattern of each subscriber (users) of the brands and the online service.



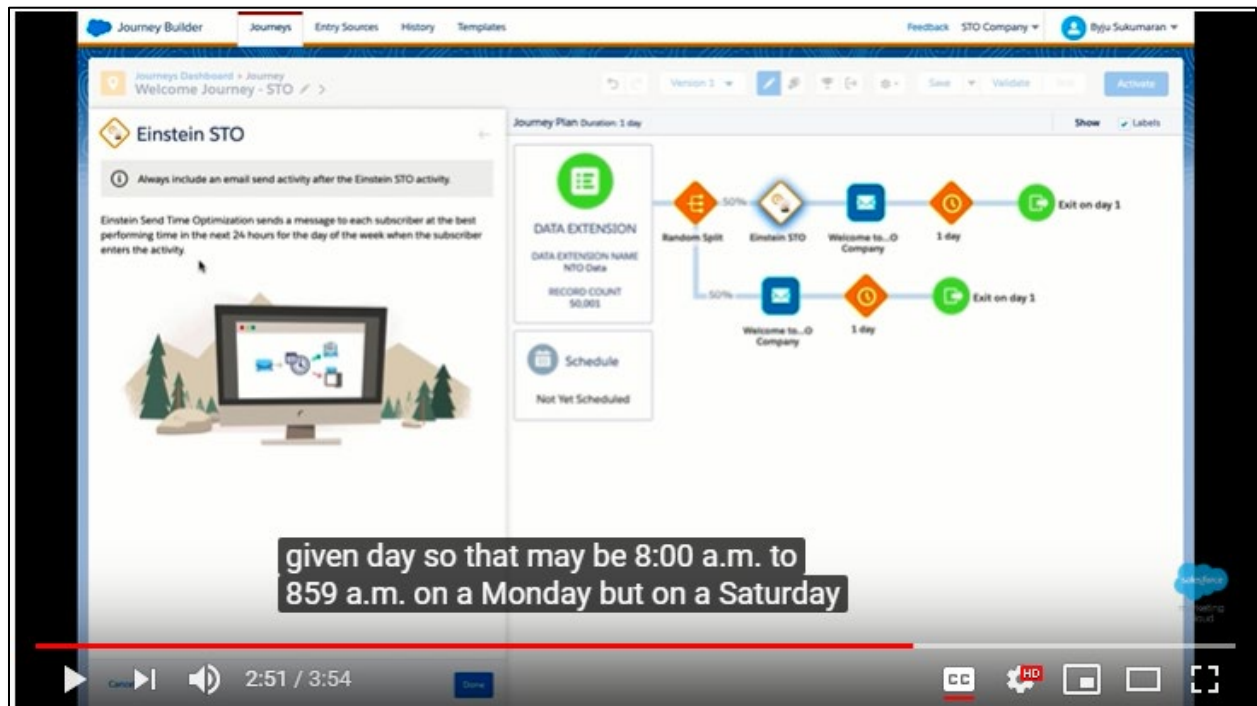
Source: <https://www.youtube.com/watch?v=v30wJVTqN8w>

13. With the analysis of the 90-day engagement data (to check consistency of the determined pattern), Einstein predicts the best hour window (determined pattern of consistent usage) for each subscriber of the online service.

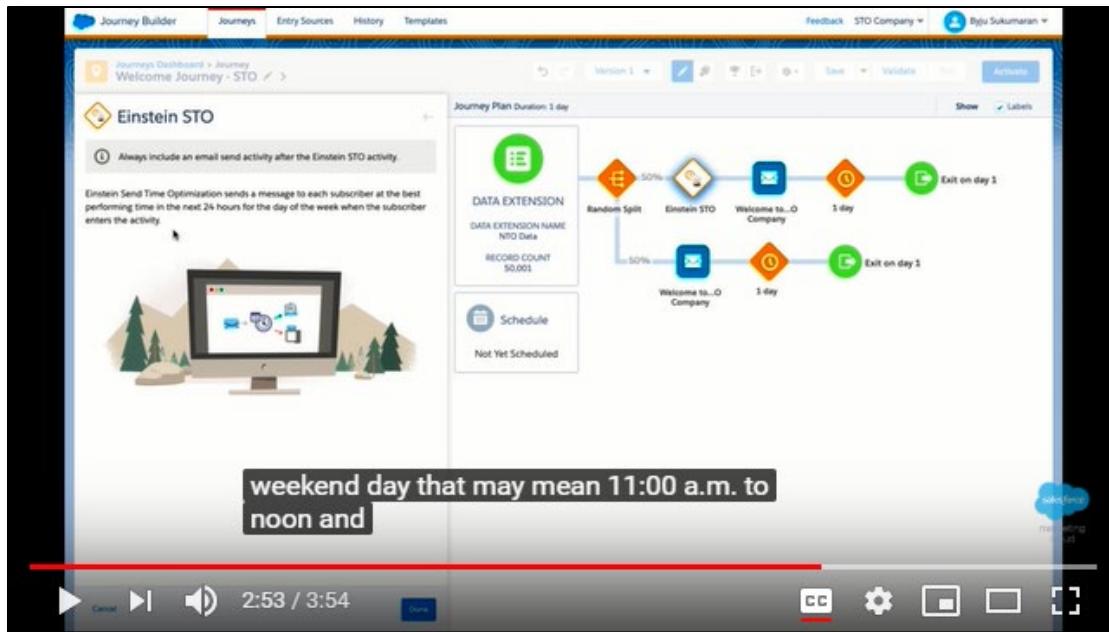


Source: <https://www.youtube.com/watch?v=v30wJVTqN8w>

14. As an example, based on the analysis of 90 days' worth of email engagement data, Einstein predicts the best hour window for a subscriber as 8:00 AM to 8:59 AM on a Monday, but on a Saturday, it is predicted as 11:00 AM to noon.



Source: <https://www.youtube.com/watch?v=v30wJVTqN8w>



Source: <https://www.youtube.com/watch?v=v30wJVTqN8w>

15. In view of preceding paragraphs, each and every element of at least claim 1 of the ‘493 Patent is found in the Accused Products.

16. Salesforce continues to directly infringe at least one claim of the ‘493 Patent, literally or under the doctrine of equivalents, by making, using, selling, offering for sale, importing, and/or distributing the Accused Products in the United States, including within this judicial district, without the authority of Brazos.

17. Salesforce has received notice and actual or constructive knowledge of the ‘493 Patent since at least the date of service of this Complaint.

18. Since at least the date of service of this Complaint, through its actions, Salesforce has actively induced product makers, distributors, retailers, and/or end users of the Accused Products to infringe the ‘493 Patent throughout the United States, including within this judicial district, by, among other things, advertising and promoting the use of the Accused Products in various websites, including providing and disseminating product descriptions, operating manuals,

and other instructions on how to implement and configure the Accused Products. Examples of such advertising, promoting, and/or instructing include the documents at:

- <https://www.salesforce.com/in/products/marketing-cloud/overview/>
- <https://www.salesforce.com/products/marketing-cloud/journey-management/>
- https://help.salesforce.com/articleView?id=mc_jb_get_started_with_journey_builder.htm&type=5
- https://dreamevent.secure.force.com/articleView?id=mc_anb_einstein_sto_app.htm&type=0,
- https://dreamevent.secure.force.com/articleView?id=mc_data_management_and_analytics.htm&type=5
- https://dreamevent.secure.force.com/articleView?id=mc_ctc_collect_code.htm&type=5
- https://dreamevent.secure.force.com/articleView?id=mc_anb_einstein_sto_dashboard.htm&type=0
- <https://www.youtube.com/watch?v=v30wJVTqN8w>
- https://help.salesforce.com/articleView?id=mc_jb_einstein_sto_use_cases.htm&type=5

19. Since at least the date of service of this Complaint, through its actions, Salesforce has contributed to the infringement of the '493 Patent by having others sell, offer for sale, or use the Accused Products throughout the United States, including within this judicial district, with knowledge that the Accused Products infringe the '493 Patent. The Accused Products are especially made or adapted for infringing the '493 Patent and have no substantial non-infringing use. For example, in view of the preceding paragraphs, the Accused Products contain functionality which is material to at least one claim of the '493 Patent.

JURY DEMAND

Brazos hereby demands a jury on all issues so triable.

REQUEST FOR RELIEF

WHEREFORE, Brazos respectfully requests that the Court:

- (A) Enter judgment that Salesforce infringes one or more claims of the '493 Patent literally and/or under the doctrine of equivalents;
- (B) Enter judgment that Salesforce has induced infringement and continues to induce infringement of one or more claims of the '493 Patent;
- (C) Enter judgment that Salesforce has contributed to and continues to contribute to the infringement of one or more claims of the '493 Patent;
- (D) Award Brazos damages, to be paid by Salesforce in an amount adequate to compensate Brazos for such damages, together with pre-judgment and post-judgment interest for the infringement by Salesforce of the '493 Patent through the date such judgment is entered in accordance with 35 U.S.C. § 284, and increase such award by up to three times the amount found or assessed in accordance with 35 U.S.C. § 284;
- (E) Declare this case exceptional pursuant to 35 U.S.C. § 285; and
- (F) Award Brazos its costs, disbursements, attorneys' fees, and such further and additional relief as is deemed appropriate by this Court.

Dated: December 18, 2020

Respectfully submitted,

/s/ James L. Etheridge

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